



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region I – New England**  
**5 Post Office Square, Suite 100**  
**Boston, MA 02109-3912**

**BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Guy J. Musto  
Terminal Superintendent  
Everett Terminal  
ExxonMobil Company  
52 Beachem Street  
Everett, MA 02149

Re: EPA-R1-2016-001311; Final Determination Concerning Confidentiality

Dear Mr. Musto:

Exxon-Mobil Company ("Company") has asserted a claim of confidentiality for the site diagrams contained in its Facility Response Plan at pages 80-98 and pages 5-23 of Appendix G ("information") that is responsive to the above-referenced Freedom of Information Act ("FOIA") request to the United States Environmental Protection Agency ("EPA" or "Agency"). In a letter dated March 28, 2016, EPA requested that you substantiate your claim of confidentiality ("request for substantiation"). On April 22, 2016, you submitted your response to EPA's request ("substantiation").

I have carefully considered your claim. For the reasons stated below, I find that the information claimed as confidential is entitled to confidential treatment.

**DISCUSSION**

Exemption 4 of the FOIA exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as "Confidential Business Information" ("CBI")).

**Initial Considerations**

EPA's regulations at 40 C.F.R. § 2.208 state that, in order for business information to be entitled to confidential treatment, the Agency must have determined that, inter alia:

- (1) The business has asserted a claim of confidentiality and that claim has not expired, been waived, or been withdrawn;

- (2) The business has shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;
- (3) The information is not, and has not been, reasonably obtainable by a third party without the business' consent through legitimate means; and
- (4) No statute specifically requires disclosure of the information.

In your substantiation, the Company stated that it sought confidential treatment for the information for the duration of the life of the facility, that no interceding events have negated its previous claim, and that the information has not become stale. In its analysis of this matter, EPA has not found any reason to doubt these assertions by the Company. As a result, I will determine whether or not the information meets the definition of trade secret or CBI.

### Trade Secret

The definition of "trade secret" under the FOIA is limited to "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a "direct relationship" between the trade secret and the production process. *Id.*

In your substantiation letter, you provided information that demonstrates a direct relationship between the requested information and the process of producing fuel. The Company specifically described the unique property and value that the information brings to the product. You also explained that disclosing the information would reveal the process of creating these unique properties in the product. In its analysis of this matter, EPA has not found any reason to doubt these assertions by the Company. The Company has demonstrated that disclosing the requested information would allow the identification of a secret and commercially valuable process used for the making, preparing, compounding, or processing of trade commodities. I conclude the information qualifies as a trade secret and is therefore exempt from disclosure under Exemption 4 of the FOIA.

Should you have any questions concerning this matter, please call Michael Knapp, at 617-918-1053.

Sincerely,



Carl F. Dierker  
Regional Counsel

cc: Bryan Olson, Director  
Office of Site Remediation & Restoration